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No. 10-1206

Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES

October Term 2010

MARY SCOTT DOE, et al.,

Petitioners,

v.

BARACK HUSSEIN OBAMA, in his official capacity as President of the United States, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING

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'CATS' LEAPS ONTO BROADWAY
The hottest theater ticket in the country
SAVING AFRICA'S BIG ANIMALS
A radical plan to butcher some of them and sell their meat
November 1982 $2.00
TEST-TUBE BABY BOOM
Elizabeth Carr, America's first in vitro baby, at the lab where she was conceived

Ean~Snowflake #30 & Abigail~Snowflake #31

Ean~Snowflake #30 & Abigail~Snowflake #31

Ean and Abigail are special reminders to us that God gives us what is good and as He sees fit. We grow through the hard times.

Abby knows that she is a "snowflake baby". Someday we want to build on that knowledge by sharing with her and Ean their much anticipated and prayed for arrival in our family. God does not always answer "Yes" to our prayers but He does know what it is best. We are thankful that God let us have Ean and Abigail - blessings and grace-growers from His hand.

Charles and Kim

Elisha~Snowflake #36

Elisha~Snowflake #36

Elisha sat on my lap on the steps of the Capitol as we listened to the Marine Band. Her little legs dangled over my knees, and her soft head rested under my chin. Her feet bounced up and down as I tapped my toes to the music.

"Did you have a fun day?" I asked her.

"Yes," she answered, very seriously, "I did."

"What did you do?"

There was a pause in the conversation, as the two-and-a-half year-old thought about the day's events.

"Today," she began as she turned around to face me, "you know what?"

"What?" I responded, looking into her hazel-green eyes.

"I kissed, GEORGE BUSH on the LIPS!"

"On the LIPS!?" I asked, incredulously.

"Yes," she said seriously. "On the lips."

We giggled, as two girls should after sharing kissing stories, and my heart melted inside as I thought about this little girls' life story so far. Adopted a few years ago as a frozen embryo, here she was brushing lips with the President and melting hearts on the steps of the Capitol. She was truly a miracle, and I was so thankful for all her parents who made the choice to love her and give her life.

~Megan Corcoran
Snowflakes Program Coordinator
July 2006

Frank~Snowflake #74

Frank~Snowflake #74

God truly has blessed us, and answered our prayers with our baby Frank.

We can only hope to give back as much as he has already given us. There are no words to describe how special he is, and how he came to us.

Thank you to the Nightlight family for being the vessel through which God has worked 101 miracles. [And counting!]

~Megan Corcoran
Snowflakes Program Coordinator
July 2006

Isabella~Snowflake #80

Isabella~Snowflake #80

We are overwhelmed each day by the incredible joy and gratitude to God for this journey. The pain of infertility runs deep for everyone no matter what your adoption process. The pain does not disappear when pregnancy occurs or when an adoption takes place. The grief is in not being able to get pregnant when you want to get pregnant naturally like everyone else gets pregnant.

There is, however, another side to this story, and that for us was through Snowflakes. Being able to carry a child and feeling her grow inside me provided a source of joy and hope, not removing the pain of infertility, but providing purpose, sense and redemption in the journey. Isn't that what the Gospel is all about?

Greg, Trica, and Izzie

...day: Cloudy, rain
...ible. High 58. Low 51.
...hursday: Partly sunny.
...ature: High 70. Low 60.
...ds, B8

The Washington Post

WEDNESDAY, MAY 25, 2005

Military Had OK To Down Cessna

...cursion's Depth Alarmed Officials

By ... S. Hsu
and Jonathan Weisman
...ington Post Staff Writers

...Defense Secretary Donald H. ...feld gave military officials the ...ority to shoot down, if neces... a small plane that wandered ...restricted airspace over the na... capital May 11, according to ...ior federal officials.

...r 11 intense minutes, customs ...raft and military fighter jets ...ined to intercept the Cessna 150 and de...mine whether the pilots were con...d and lost or were targeting ...hington. Military officials never...ved the aircraft to be hostile, but ...e House and U.S. Capitol offi... grew more concerned as it flew ...n three miles of the Executive ...sion.

...he plane, one of the federal offi... said, came within "15 to 20 sec... of being downed before it fi...ally heeded repeated orders ...m away from the city.

...e new details, also corroborat... yesterday by a senior federal law

President Bush, holding Trey Jones as mother Tracy watches, underscored his opposition to the bill in an East Room ceremony with children who were adopted as embryos. The legislation would allow federal funding of research on stem cells from embryos frozen by fertility clinics.

House Defies Bush on Stem Cells

50 Republicans Help Pass Bill to Repeal Restrictions on Federal Funding

Senate To Vote Delays Nomin...

But Battle May Over Other Jud...

By Charles Babington
Washington Post Staff Writer

A bipartisan Senate ...appointees bore its first fr... the chamber voted 81 to 1... tering a nominee who ... for a seat on the U.S. Court... 5th Circuit. A confirmation ... R. Owen of Texas is sche... with Republicans predict... comfortably.

At least two other nomin... sured up-or-down votes und... the Senate's newfound cor... vive over the long term, ... warned because party lead... accord's meaning and severa... are still pressing for the ri... the negotiators averted.

"This is a truce, not a tre... rin G. Hatch (R-Utah). H... agreement and predicted th... soon will be back on the ve... bar filibusters of judicial nom... over two appellate court nom... tioned in the accord.—Rem...

The Washington Times

FROM PAGE ONE

Mary F. Calvert/The Washington Times

President Bush held Trey Jones of Cypress, Texas, who was born through the Snowflakes Frozen Embryo Adoption Program, after he vetoed the stem-cell bill.

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PETITION FOR REHEARING

The petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered on May 31, 2011, and (2) granting the petition. As grounds for this motion, petitioner states the following:

INTRODUCTION

I. Violation of Due Process of the Law

Under the Due Process of the law this case should be heard. Every person should be given the opportunity to be heard, have their day in court and have the benefit of the general law. The validity of an embryo's life needs to be appraised by this court. This appraisal would once and for all show that 'the lives with potential' that frozen embryos are is enough to give standing as they are a person and therefore must be heard with their day in court and with the benefit of the law.

It is respectfully preferred that in denying certiorari to Mary Scott Doe and all other frozen embryos the court committed grievous error. With no precedence to guide the lower courts, this court missed out on an opportunity to set the guidelines for when life beings.

II. Setting a Standard

A standard must be set by this court so that the lower courts have a precedence to use when deciding other cases under the same category. With no standard these types of cases are being overlooked and therefore lives are being destroyed. When the courts deal with adoption and custody of children they almost always use the best interest standard. They do whatever is the best interest for the children. Why aren't preborn children given the same standard? Preborn children are abused and destroyed and no one is looking out for their best interest. A society's strength is determined by the care and protection it affords it's weakest members. It seems incongruous when so called endangered animal species are afforded vastly more important rights than preborn human beings. The world dean of geneticists, Dr. LeJeune of Paris France said:

"If you ask science: 'what is a human being'?

> Science responds: 'a human being is a member of our species.' And if you ask science: 'what is a person?' Science responds: 'a person is a human being alive.' And science has **no** *other* answer! Dr. LeJeane further stated: "A human embryo is a being, and being human, it is a human being." It is alive.

III. The Alternatives

The experimentation on these frozen human embryos is not the only option for them. There has been a successful process of adopting the frozen embryos out to families who cannot otherwise have children. Furthermore, the embryonic cells are not needed to do this experimentation because human skin cells have successfully been used. Why destroy a life when the same experimentation can be done without harm to anyone? Adoption is a hard process for a lot of families trying to get children and here is an opportunity to help create more families.

IV. Life

As human beings life and death are natural to us. Unnatural death has always been against our morals. Before law existed it was written down in God's words and on our souls that "thou shall not kill." Here the destruction of lives is happening and there is no justice being made. The most innocent of lives are being destroyed for sad and unnecessary reasons. The life of the preborn child is being sacrificed for medical testing when we know and have already successfully done this testing on human skin cells. As life is protected in our law and we know the destruction of innocent life is wrong. Justice must now be made. We must preserve this most innocent and pure form of life and not subject it to medical testings which ultimately causes its destruction. The courts can no longer sit idly by and think that their inaction is enough.

This inaction is action. It is helping the effort for embryonic cell testing and the destruction of the preborn child. Maybe some think that by not bringing it into the courts, by silencing their voices, and by denying the public knowledge to recognize the potential of these preborn children that this ignorance is the best path to choose. We must share the knowledge of these preborn children and help them to life and not sentence them to death.

The petition for a Writ of Certiorari submitted to the Court on April 5, 2011 presented scientific and empirical evidence of the personhood of Mary Scott Doe, a frozen embryo, that has never before been brought before a Court and submitted unique and unprecedented empirical data that could undermine the *Roe v. Wade* decision of the Court. I claim that there is a precedent for accepting such evidence in deciding a case and that such a precedent is embodied in three cases overturned by the Court in its recent history: *Plessy v. Ferguson*(**163 U.S. 537 (1896)**; *Lochner v. New York*(**198 U.S. 45 (1905)**; *Hammer v. Dagenhart*(**247 U.S. 251 (1918)**.

These cases were overturned because new empirical data, from social or scientific sources were brought before the Court, opening a new juridic moment, a new application of the rights embodied in the Bills of Rights of the Constitution of the United States. *Plessy v. Ferguson* was concerned with the rights of African-Americans; *Lochner v. New York* with the rights of workers; and *Hammer v. Dagenhart* with the rights of children. *Roe v. Wade* was concerned with the rights of those in utero, the first time that this question had been brought before the Supreme Court.

The scientific and empirical data of the embryonic life of the human species clearly demonstrates that the human embryo is vastly different from the embryos of non-human mammalian species[1] and warrants consideration by the Court of a tenet of Common Law which, in the past determined the legal status of one in utero and its protection under the law: *Qui in utero est pro jam nato habetur, quoties de ejus commodo quaeritur.*[2]

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[1] Cf. The Indices of *Radiology*, a monthly journal of the Radiological Society of North America, 1981-2010, under the heading: *Fetus.*

[2] *"One in the womb is considered as on already born, whenever it is a question of its benefit." Blackstone's Commentaries.* Also cited in *Black's Law Dictionary,* 3rd Edition., pg. 1481.

With *Roe v. Wade*, constitutional law on the threshold of a new development, a new development that could have been foreseen as the protection of the law was extended from the rights of African-Americans[3] to the rights of Native-Americans[4], from the rights of workers to the rights of women, from the rights of adults to the right of children. *Roe v. Wade* marked the entrance of those in utero into the legal arena, and like *Plessy v. Ferguson* and *Lochner v. New York*, there are no precedents to draw upon in deciding the issue. New precedents have to be created. These precedents have to be drawn from the empirical data of the embryonic sciences and on detailed and precise knowledge of the facts of human embryonic life.

I would call the Courts attention to the numerous studies of the human embryo arising from the discovery of DNA[5]

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[3] Fifteen Amendment of the U.S. Constitution: *Brown v. Board of Education.*

[4] *United States ex. Rel. Standing Bear v. Crook, May 12, 1879.*

[5] *The Double Helix: A Personal Account of the Discovery of the Structure of DNA*" by James Watson, Simon & Schuster, New York, 1968.

The Double Helix and the Law of Evidence by David H. Kaye, Harvard University Press, 2010.

Francis Crick: Discover of the Genetic Code by Matt Ridley, Harper/Collins, 2006.

The Changing Role of the Embryo in Evolutionary Thought by Ron Amundson, Cambridge University

Press, 2007,

Mind from Matter by Max Delbruck, Blackwell Scientific Publications. Palo Alto, 2006.

Molecular Genetics of Early Human Development, Bios Scientific Publications, Oxford, 1997.

Thinking About Science: Max Delbruck and the Origins of Molecular Biology by Ernst Peter Fischer

& Carol Lipson, W.W. Norton & Company, New York, 1988,

and related sciences[6] uncovering the human identity of the human embryo and the vast amount of scientific information revealed by studies of the Human Genome.[7] These sciences provide the basis for a new scientific and legal definition of human gestation, and the emergence of those in utero into the legal arena:

A human subject in a state of organizational and developmental repose, with an integrating principle distinct and separate from the body of the mother. And there is a body of evidence supporting the claim that *the integrating principle is a human person in the unfolding of its innate human potential, gradually experiencing, expressing and revealing its distinctly human powers.*

There are over 200 embryonic sciences and it is simply presumed, even in law, that human embryonic life is exclusively somatic, with no human subject. I argue that all the evidence from the embryonic sciences clearly indicates that the genetic structure of the human embryo is dual in nature, not merely somatic, but psychosomatic – that the biological package that we call the human embryo is a genetic singularity, original and unique, and that the genetic package has, not only a psychosomatic identity, but a psychosomatic specification as well, which we call the human person. Each embryo has an unrepeatable human identity.

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[6] *Nanosciences: The Invisible Revolution* by Christian Joachim & Laurence Plevert, World Scientific, 2009.

"Toward Self-Organization and Complex Matter, James Lehn. *Science magazine,* 295(5564).

[7] *Genome: The Autobiography of a Species* by Matt Ridley, Harper/Collins, 2006.

The Human Genome by R. Scott Hawley & Catherine A Mori, Academic Press, London, 1999.

The Human Genome Project" Cracking the Code Within Us by Elizabeth L. Marshall, Franklin Watts, 1996.

A Life Decoded: My Genome: My Life by J. Craig Venter, Viking, 2007.

What the embryonic sciences demonstrate, with detailed empirical data, is that the womb is a temporary habitation of a developing human being, with embryonic and extra-embryonic support systems designed specifically for the preservation and development of a human life.[8] Until now we have brought under the concern of the law the "what" of the human embryo, its somatic structure. We have not examined the evidence for a "who" of the human embryo, its psychosomatic structure, the unrepeatable identity of each human embryo. There is an "I" that is the subject of rights, and therefore I propose that the protection of the human embryo is a constitutional allowable goal, in the face of the embryonic sciences that have not yet been brought before the Court.

I place before the Court the argument that the fertilized ovum of the human species is a genetic singularity, an anthropological package, identifiable in his DNA structure and by a genetic signature, revealing not only its distinctly human identity, but a human subject as well.

In the light of these facts from the embryonic sciences, which have never been brought before the Court, I request that the Court reconsider the Petition for a Writ of Certiorari submitted to the Court in the case of Mary Scott Doe, and that the full Court be allowed to hear the startling, astonishing and undeniable data of the embryonic sciences that the human embryo is a person

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[8] Cf. *Clinical Studies in Diagnostic Ultrasound*. Churchill Livingstone, Inc., New York, 1981-1987.

Fetal Sonography by Terry J. DuBose, W.B. Saunders Co., Philadelphia, 1996.

Fetal Neurology vols. 1-36, W.B. Saunders Co., Philadelphia.

The Cognitive Neurosciences III, by M. S. Gazzaniga, MIT Press, 2004.

under the law and entitled to the full protection of the rights embodied in the Bill of Rights of the Constitution of the United States.

CONCLUSION

For the reasons set forth above, as well as those contained in Petition for Writ of Certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

As counsel for the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 51.2.

R. Martin Palmer

Rudolph Martin Palmer, Jr.
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of June, 2011, three copies of Petition for Rehearing were served by first-class mail postage prepaid on:

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